

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

LAURIE M. KOOIMAN,

Plaintiff,

vs.

JO ANNE B. BARNHART, Commissioner of Social Security,
Defendant.

No. **C01-4066-PAZ**

ORDER

This matter is before the court on the defendant's Motion to Alter (Doc. No. 13) and supporting brief (Doc. No. 14). The defendant asks the court to amend its order of December 20, 2001 (Doc. No. 11), to remand this case to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g), rather than sentence six of the statute. The Commissioner states the treating physician's records at issue do not constitute new evidence such that a sentence six remand can be made, because those records actually were a part of the record before the Administrative Law Judge at the time of the plaintiff's hearing.

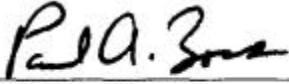
In oral argument held on January 9, 2002, the Commissioner suggested the court need not make a full and complete review of the record in order to grant the motion for a sentence four remand. The court disagrees. Sentence four authorizes the court to enter a judgment "upon the pleadings and transcript of the record." 42 U.S.C. § 405(g). The Commissioner cited *Buckner v. Apfel*, 213 F.3d 1006 (8th Cir. 2000) in support of her argument; however, the *Buckner* court held "[a] sentence four remand is . . . proper whenever the district court *makes a substantive ruling* regarding the correctness of a decision of the Commissioner and remands the case in accordance with such a ruling." 213 F.3d at 1010 (emphasis added) (citing *Melkonyan v. Sullivan*, 501 U.S. 89, 98, 111 S. Ct. 2157, 115 L. E. 2d 78 (1991)). Clearly, to make a substantive ruling regarding the correctness of the Commissioner's decision, the court must review the record, and may not simply take at face value the Commissioner's representation that sentence four remand is the proper remedy, even when the plaintiff agrees. *See also Hanson v. Chater*, 895 F. Supp. 1279, 1283 (N.D. Ia. 1995) ("To remand under sentence four, the district court must conduct a plenary review of the entire record and make a judgment either affirming, modifying, or reversing the Commissioner's decision to deny benefits.") (citing *Seaborn v. Sullivan*, 822 F. Supp. 121, 124 (S.D.N.Y. 1993)).

Accordingly, the motion to alter is **denied**. In addition, the court's prior order (Doc. No. 11) is **withdrawn**. The Commissioner is directed to file her responsive brief by **February 1, 2002**. The court thereafter will review the entire record and enter judgment affirming, modifying, or reversing the

Commissioner's decision to deny benefits.

IT IS SO ORDERED.

DATED this 10th day of January, 2002.

A handwritten signature in black ink, appearing to read "P.A. Zoss", is written over a horizontal line.

PAUL A. ZOSS
MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT